



**Summit Coveline Limited & another v Mpangurwa (Civil Appeal  
E050 of 2024) [2025] KEHC 12349 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 12349 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL E050 OF 2024**

**F WANGARI, J  
JULY 31, 2025**

**BETWEEN**

**SUMMIT COVELINE LIMITED ..... 1<sup>ST</sup> APPELLANT**

**MALEL SHADRACK KIPRONO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JEFFREY FERDINAND MPANGURWA ..... RESPONDENT**

*(Being an appeal against the Judgment of Hon. Nabibya (PM) delivered on 22nd June 2023 in Mombasa Chief Magistrate’s Court Civil Suit No. 1245 of 2014, Jeffrey Ferdinand Mpangurwa v Summit Coveline Limited & Malel Shadrack Kiprono)*

**JUDGMENT**

1. The Plaintiff/ Respondent instituted this suit through a Plaint dated 30/06/2014 seeking material damages being repair costs for his motor cycle registration number KBE 694A which was extensively damaged as a result of an accident that occurred on 22/08/2011 involving his motor cycle, and the Defendants’/ Appellants motor vehicle registration number KBB 473X/ZC 7236 New Holland Tractor. It was averred that the Plaintiff was riding his motorcycle along Makupa Causeway when the Defendants’ motor vehicle was so negligently driven, controlled and/or managed by the Defendant or its authorized driver, servant or employee that it lost control, veered off its rightful path and hit the Plaintiff’s motorcycle, whereby the Plaintiff’s motorcycle was extensively damaged.
2. The Plaintiff stated that the said accident was wholly caused by negligence on the part of the Defendant, or its authorized servant and/or agent and therefore held the Defendant vicariously liable. That the Plaintiff’s motorcycle was so extensively damaged that the said motorcycle needed complete repairs as a result of which the Plaintiff suffered loss and damage. Particulars of Special Damages as pleaded by the Plaintiff were as follows;
  - a. Assessment report - Kshs. 3,500



- b. Police Abstract form fees - Kshs. 200
  - c. Repair costs - Kshs. 21,372
  - Total - Kshs. 25,072.
3. The Plaintiff prayed for judgment against the Defendants for General Damages, Special Damages of Kshs. 25,072, costs of and incidentals to the suit, interest on above at court rates, and any other relief that this court may deem fit and just to grant.
4. The Defendants filed a Statement of Defence dated 08/10/2014 denying the allegations by the Plaintiff and put him to strict proof thereof. In the course of the proceedings, the Defendants filed a Notice of Motion application dated 14/10/2023 seeking to have the suit struck out on grounds that the suit was res judicata.
5. It was stated that the Plaintiff had filed a similar suit against the Defendants in Mombasa RMCC No. 332 of 2012, Jeofrey Mpangurwa v Summit Cove Line Company Limited, seeking General and Special Damages for injuries sustained in the same accident, and the matter was concluded in favour of the Plaintiff.
6. The trial court stated that the issue of res judicata would be determined after final submissions. The matter proceeded for hearing with Judgment dated 22/06/2023 being entered in favour of the Plaintiff. In summary, the court Judgment was entered as hereunder;
  - a. The Defendant was found to be 100% liable for the accident.
  - b. The suit was not res judicata as Civil Suit No. 332 of 2012 claimed General and Special damages and not material damage.
  - c. Material/ Special Damages awarded at Kshs. 25,072/=
  - d. Claim for General Damages dismissed
  - e. Costs of the suit and interest
7. Dissatisfied with the Judgment of the lower court, the Defendants/ Appellants filed this appeal vide the Memorandum of Appeal dated 26/02/2024 on grounds that;
  - a. The learned magistrate erred in law in failing to hold that CMCC No. 1245 of 2014 was res judicata by reason of a competent court's determination in Mombasa RMCC 332 of 2012 between the same parties arising out of the same cause of action.
  - b. That the learned magistrate erred in failing to uphold the public policy principle that there ought to be finality in litigation between parties over issues arising out of the same cause of action; and
  - c. That the learned magistrate erred in finding that it had jurisdiction to continue to hear the matter that was otherwise res judicata.
8. The Appellant prayed that this appeal be allowed on terms that, the Judgment of delivered on 22/06/2023 in Mombasa CMCC No. 1245 of 2014 be set aside and be substituted with an order dismissing the suit with costs to the Defendants, and that the costs of this appeal be awarded to the Appellant.



## Submissions

9. The appeal was canvassed by way of written submissions. Only the Appellants complied by filing their submissions dated 16/01/2025. It was submitted that the trial court erred in not finding the matter to be res judicata contrary to Section 7 of the *Civil Procedure Act* which prohibits a court from trying a suit or issue that has already been directly and substantially in issue in a previous suit between the same parties and decided by a competent court.
10. The Respondent filed the suit Mombasa RMCC No. 332 of 2012 against the 1<sup>st</sup> Appellant arising from a traffic accident which occurred on 22/08/2011, involving motor vehicle registration number KBB 473X/ZC 7336 and motorcycle registration number KBE 694A.
11. The Respondent sought general damages, special damages, costs, and incidentals. That the suit was conclusively decided on 04/10/2012 where the Defendant was held 100% liable for Kshs. 75,000 plus costs and interest, evidenced by the decree and certificate of costs dated 09/01/2019.
12. The Appellants further submitted that the Respondent filed the suit herein regards the same accident, involving the same parties with an addition of the 2<sup>nd</sup> Appellant who was the driver of the 1<sup>st</sup> Appellant's motor vehicle as at the time of the accident.
13. The Respondent claimed for repair costs for the damage that had been incurred to his motorcycle as a result of the accident. The Appellants relied on the holding in the case of *E.T. v Attorney General & Another* (2012) eKLR and urged the court to allow the appeal and grant the orders sought.

## Analysis

14. The role of the first appellate court to reexamine and to reevaluate evidence to come up with its own findings was set out in *Selle v Associated Motor Boat Co.* (1968) E.A 123 as follows: -

“... Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect ...”
15. I have considered the Record of Appeal and the submissions by the Appellants, the issues for determination are;
  - a. Whether the case in the trial court was res judicata
  - b. Who should bear costs
16. It is not in dispute that the Respondent filed Mombasa RMCC No. 332 of 2012 and the suit subject to this appeal, Mombasa RMCC No. 1245 of 2014. Both matters were as a result of an accident involving the Respondents motor cycle and the Appellants vehicle. The only difference is that in suit no. RMCC 1245 of 2014, the driver of the Defendant's vehicle was added as a Defendant.
17. The Appellant argues that the suit RMCC No. 1245 of 2014 was res judicata by virtue of the suit in RMCC No. 332 of 2012. On the other hand, the Respondent argues that the suit is not res judicata as the issues raised were different than the issues raised in the earlier suit. In the suit in issue, the Respondent sought for material damages being repair costs of the motor cycle, while in the earlier suit, the Respondent sought for General and Special Damages for injuries sustained in the accident.



18. Section 7 of the *Civil Procedure Act* on res judicata, reads as follows:

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

19. The rationale of the doctrine of res judicata is to ensure that every litigation must come to an end. In the case of *The Independent Electoral and Boundaries Commission v Maina Kiai & 5 others*, [2017] eKLR, the Court of Appeal enunciated the elements to be satisfied in proving a matter to be res judicata as follows;

“For the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must be satisfied, as they are rendered not in disjunctive but conjunctive terms;

- a) The suit or issue was directly and substantially in issue in the former suit.
- b) That former suit was between the same parties or parties under whom they or any of them claim.
- c) Those parties were litigating under the same title.
- d) The issue was heard and finally determined in the former suit.
- e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

20. The above was summarized in the Court of Appeal case of *Barongo v Chemelil Sugar Co. Ltd* (Civil Appeal 97 of 2019) [2023] KECA 1400 (KLR) (24 November 2023) (Judgment) quoting the case of *Benard Mugo Ndegwa v James Nderitu Githae & 2 others* [2010] eKLR as hereunder;

- a. the matter in issue is identical in both suits
- b. the parties in the suit are the same
- c. sameness of the title/claim
- d. concurrence of jurisdiction; and
- e. finality of the previous decision.

21. . On whether the lower court suit was res judicata, this is best answered in the case of in *Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another* [2016] eKLR, where the Supreme court stated as follows;

“

“52. res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights. It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights.....”



54. The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.

55. It emerges that, contrary to the respondent's argument that this principle is not to stand as a technicality limiting the scope for substantial justice, the relevance of res judicata is not affected by the substantial-justice principle of article 159 of *the Constitution*, intended to override technicalities of procedure. res judicata entails more than procedural technicality, and lies on the plane of a substantive legal concept.

56. The learned authors of Mulla, Code of Civil Procedure, 18th Ed 2012 have observed that the principle of res judicata, as a judicial device on the finality of court decisions, is subject only to the special scenarios of fraud, mistake or lack of jurisdiction (p 293):

The principle of finality or res judicata is a matter of public policy and is one of the pillars on which a judicial system is founded. Once a Judgment becomes conclusive, the matters in issue covered thereby cannot be reopened unless fraud or mistake or lack of jurisdiction is cited to challenge it directly at a later stage. The principle is rooted to the rationale that issues decided may not be reopened and has little to do with the merit of the decision.”

22. The Respondent has a bite of the cherry in the suit RMCC No. 332 of 2012. Nothing prevented him from claiming material damages. Filing of the subject suit is one of what the doctrine of res judicata prevents, which is multiplicity of suits. I do concur with the submissions of the Appellants that the suit was res judicata and it ought to have been struck out with costs. The appeal therefore has merits and the lower court Judgment is set aside and substituted with a Judgment striking out the suit with costs.

23. On costs, the same follows the event. Though the appeal being a success, costs are awarded to the Appellants.

### **Determination**

23. The upshot of the foregoing is that the court renders itself as hereunder;

- a. The Appeal has merit and is allowed.
- b. The lower court Judgment dated 22/06/2023 is hereby set aside and substituted with an order striking out the suit with costs to the Defendants.
- c. Cost of the appeal awarded to the Appellant.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

.....

**HON. F. WANGARI**

**JUDGE**



In the presence of;

Mr. Omwenga Advocate for the Appellants

N/A by the Respondent

Ms. Norah, Court Assistant

